

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

This opinion does not in any way affect the rights of certain institutions to continue functioning under their statutes, which may permit instalment paying for board and room.

JAMES G. FROST
Deputy Attorney General

June 9, 1952

To Clyde N. Manwell, Park Planner
Re: Fire Insurance on Buildings under Construction

This will acknowledge receipt of your memo of May 22, 1952, to which you attached a paragraph from your standard specifications covering the contractor's responsibility for work. You state that it is your opinion that this paragraph protects you with respect to fire coverage while buildings are under construction.

The paragraph referred to reads in part as follows:

"Until final acceptance of the work by the Engineer, it shall be under the charge and care of the Contractor, and he shall take every necessary precaution against injury or damage to the work by the action of the elements, or from any other cause whatsoever. . . The Contractor shall bear all losses resulting to him on account of the amount or character of the work . . . or on account of the weather, elements, or other causes. . ."

"Injury or damage by the action of the elements" is a somewhat uncertain expression. Injuries to buildings by wind, rain, frost and heat are spoken of as injuries by the elements, but courts have stated that unless fire is caused by lightning or other superhuman agency, then the injury is not within the meaning of "element".

It is the opinion of this office that to protect such property properly, the provision should be expressly stated in the specifications. Paragraph 11 does not adequately protect the State, in that there is no positive provision placing the liability upon the contractor in the event the building is consumed by fire resulting from causes other than an "Act of God".

While you are perhaps right in your opinion that you are covered by this paragraph, in that we feel that a court of law would so interpret paragraph 11, we also feel that the burden is upon the State to provide expressly for such fire coverage, because suit should not be necessary in order to interpret the provisions of our contracts.

We would therefore recommend that a provision be inserted in paragraph 11 expressly placing the liability upon the contractor in case fire should consume or damage the building prior to the time it is completed.

JAMES G. FROST
Deputy Attorney General

June 10, 1952

To Marion B. Stubbs, State Librarian
Re: Files of the State Paper

This will acknowledge your memo of May 21, 1952, in which you state

that the law provides that the Kennebec Journal "shall be the state paper," and ask if from a legal point of view you should keep the original printed editions of the state paper when you have microfilmed reproductions.

We can find no express provisions authorizing the destruction of such paper, it not being classified as a record of your department. We are of the opinion that before such paper is destroyed there should be legislative approval.

We draw your attention to Chapter 91 of the Public Laws of 1951, relating to the old records of any State department, which authorizes the destruction of such records, if they are valuable, provided they have been photographed or microfilmed. We feel that similar authority should be granted with respect to the "state paper".

JAMES G. FROST
Deputy Attorney General

June 18, 1952

To Honorable George D. Varney
Re: Turnpike Employees -- Retirement

This will acknowledge receipt of your letter of June 17, 1952, in which you inquire as to the eligibility of the Maine Turnpike to join the Maine Retirement System.

In response to your question, please be advised that we are of the opinion that the Maine Turnpike has all the attributes of a "quasi-municipal corporation" and may join the Maine Retirement System.

This opinion is based upon a complete reading of Chapter 69 of the Private and Special Laws of 1941, particularly sections 4 and 18.

ALEXANDER A. LaFLEUR
Attorney General

June 20, 1952

To Robert L. Dow, Commissioner of Sea and Shore Fisheries
Re: Alewife Fishery in Newcastle

This office is in receipt of your memo of June 6, 1952. You state that presently the towns of Newcastle and Nobleboro share exclusive rights to the alewife fishery at Damariscotta Mills on the Damariscotta River. You also state that the Town of Newcastle wishes to construct a fishway at Sherman Lake, which is a part of the Sheepscot River watershed and wholly within the Town of Newcastle, and that the Town of Newcastle wishes to keep to itself the exclusive alewife fishery rights with respect to this new development. The question has been asked if the law with respect to the Damariscotta River is broad enough to permit this proposed development at Sherman Lake.

The answer to this is, No.

So far as this office can ascertain, the Damariscotta River and the Sheepscot River are distinct bodies, and legislation with respect to the Damariscotta